



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 12, 1998

Ms. Sara A. Fauls
Assistant City Attorney I
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR98-0681

Dear Ms. Fauls:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 113129.

The City of Plano (the "city") received four open records requests for the architectural plans of five commercial properties. These plans were submitted to the Building Inspection Department of the city as mandated by ordinance to obtain required building permits. You assert that the requested architectural plans are confidential pursuant to sections 552.101 and 552.110 of the Government Code, and further contend that the plans are confidential under federal copyright law. We have considered your arguments and reviewed the submitted information.¹

Section 552.110 protects the property interests of private persons by excepting from disclosure two types of information: (1) trade secrets, and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. You argue that the requested architectural plans, as trade secrets or commercial information, are confidential under the courts ruling in *Taco Cabana Intern, Inc. v. Two Pesos, Inc.*, 932 F.2d 1113 (5th Cir. 1991) *cert. granted in part* 502 U.S. 1071 (1992), 112 S.Ct. 964, 117 L.Ed.2d 130, *affirmed* 505 U.S. 763 (1992), 112 S.Ct. 2753, 120 L.Ed.2d 615, *rehearing denied* 505 U.S. 1244 (1992), 113 S.Ct. 20, 1210 L.Ed.2d 947. In *Taco Cabana*, the court found that architectural plans may be trade secrets, and that the filing of such plans with a city does not make them public information within the context of secrecy that relates to the law of trade secrets. *Taco Cabana*, 932 F.2d at 1123, 1124.

¹We assume that the "representative samples" of records submitted to this office are truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

However, while architectural plans may be considered trade secrets, in order to receive trade secret protection under section 552.110, a governmental body or private entity must establish that the requirements for protection as a trade secret under section 552.110 have been met.² When an agency or company fails to provide relevant information regarding the factors necessary to make a section 552.110 claim, there is no basis to withhold information under this section. Open Records Decision Nos. 405 (1983), 402 (1983). Pursuant to section 552.305 of the Government Code, we notified seven entities of the request for information and of their opportunity to claim that the information at issue is excepted from disclosure.³ None of the seven responded to our notification. Therefore, as neither the city nor those with a proprietary interest in the architectural plans has established that the plans are protected as a trade secret or commercial or financial information, we have no basis upon which to conclude that the requested plans are confidential under section 552.110.

You also argue that the requested plans are protected by copyright law. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member

²The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex.), *cert. denied*, 358 U.S. 898 (1958); *see also* Open Records Decision No. 552 (1990) at 2. Section 757 provides that a trade secret is

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business A trade secret is a process or device for continuous use in the operation of the business. . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939) (emphasis added). In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret as well as the Restatement's list of six trade secret factors. RESTATEMENT OF TORTS § 757 cmt. b (1939).

³The seven entities who received letters were either the owners of the properties whose plans were requested or the architects who drafted the plans. The entities were: Keeton/Sayers Architects; Mr. Burney Schuckman; Hodges, Gromatzky and Associates; Albertson's Store # 4160; Plano Savings & Loan; Wright, Rich & Brantley; and Callaway Architects. In addition to sending letters to two of the owners of properties whose plans were requested, this office attempted to identify the owners of two of the other requested properties, Village Creek Shopping Center and Parkwood Shopping Center, and were able to identify only one owner, who informed us that he is the owner of the Parkwood Shopping Center, and the requestor of plans relating to this property. We also were unable to find current addresses for three of the architectural firms; Keeton/Sayers Architects, Mr. Burney Schuckman, and Hodges, Gromatzky and Associates. Because of the difficulty in finding the correct addresses of those third parties with proprietary interests in the requested plans, we asked the city for assistance by phone calls on February 17, 1998 and February 20, 1998, but the city has not responded as of the date of this ruling.

of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In this case, if the requested architectural plans are copyrighted, the city need not provide copies of them to the requestor, but must make them available for inspection and copying by the requestor, as no exception under chapter 552 has been established for withholding the requested plans.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/cbh

Ref.: ID# 113129

Enclosures: Submitted documents

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